

RECENT EVENT

IMMIGRATION — FEDERALISM — FEDERAL AND STATE GOVERNMENTS — OBSCURE ACCOUNTABILITY, EVADE STRUCTURAL SAFEGUARDS. — Construction and Management of the South Florida Detention Facility.

The second Trump Administration is executing an extensive immigration crackdown — pulling more people into detention,¹ expanding Immigration and Customs Enforcement (ICE),² and funneling money from other federal initiatives into immigration enforcement.³ Contemporaneously, in 2025, the state of Florida imposed harsher penalties on immigrants and passed new measures to facilitate detention and deportation.⁴ This trend has manifested in Florida's construction of immigration detention facilities — and in conflicting and unclear accounts from the state and federal governments regarding who controls these facilities. These unclear accounts have prevented the people from assigning responsibility to the state or federal government for potential environmental and human rights violations — manifesting the Supreme Court's concern, articulated in a line of federalism-related case law, that attempts to circumvent our federalist structures may defeat accountability.

On June 19, 2025, Florida Attorney General James Uthmeier announced that Florida would begin constructing an immigration detention facility in the Everglades.⁵ Invoking emergency powers to bypass

¹ Chris Cameron & Hamed Aleaziz, *Over 60,000 Are in Immigration Detention, A Modern High, Records Show*, N.Y. TIMES (Aug. 11, 2025), <https://www.nytimes.com/2025/08/11/us/politics/immigration-detention-numbers.html> [<https://perma.cc/W7RX-36P5>].

² *Id.*

³ See, e.g., Courtney Rozen, *US States to Get \$608 Million from FEMA to Build Migrant Detention Centers*, REUTERS (July 26, 2025), <https://www.reuters.com/legal/government/us-states-get-608-million-fema-build-migrant-detention-centers-2025-07-25> [<https://perma.cc/3V5A-XLQ7>].

⁴ See, e.g., Greg Allen, *On a Second Try, Florida Republicans Agree on a Law to Assist Trump's Deportations*, NPR (Feb. 13, 2025, at 19:11 ET), <https://www.npr.org/2025/02/13/nx-s1-5294991/trump-deportations-florida-desantis> [<https://perma.cc/9GM5-RLL7>].

⁵ James Uthmeier (@AGJamesUthmeier), X (June 19, 2025, at 12:49 ET), <https://x.com/AGJamesUthmeier/status/1935741644101374271> [<https://perma.cc/B7YQ-AB36>] (“Alligator Alcatraz: the one-stop shop to carry out President Trump’s mass deportation agenda.”). A state-constructed and -operated facility entirely for immigration detention appears to be novel. The statutory scheme under which the Florida and federal governments formed an agreement ostensibly applies to individual law enforcement officers performing immigration-related enforcement rather than to states or state agencies constructing facilities; individuals detained by the federal government for immigration violations have, however, been held along “with criminal inmates” in state-run “non-INS [Immigration and Naturalization Services] correctional facilities.” Marissa B. Litwin, Comment, *The Decentralization of Immigration Law: The Mischief of § 287(g)*, 41 SETON HALL L. REV. 399, 408 (2011). Such arrangements may also display accountability problems, but are distinct and deserve independent treatment. See *id.* at 408–09. Novelty served as support for the ultra vires claim against “Alligator Alcatraz” in Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief ¶ 106, M.A. v. Guthrie, No. 25-cv-00765 (M.D. Fla. Aug. 22, 2025) [hereinafter *Guthrie* Complaint].

legal requirements for construction,⁶ outsourcing to private companies,⁷ and sidelining local officials,⁸ Florida Governor Ron DeSantis and the state government initiated warp-speed construction, opening what was formally named the South Florida Detention Facility (“the facility”) by July 1.⁹ But the name used in Attorney General Uthmeier’s original announcement, based on the area’s isolation and wildlife population, was the name that stuck in public discourse: “Alligator Alcatraz.”¹⁰

When the facility officially opened, the President and the DHS Secretary, Kristi Noem, both made clear that they saw it as a model for others.¹¹ And as Floridians lined up either to protest¹² or to celebrate¹³ the construction, civil rights and environmental groups filed lawsuits.¹⁴ Their suits included claims that the state and federal governments were unconstitutionally denying detainees contact with

⁶ Bob Norman & Michelle DeMarco, *Governor DeSantis Is Building “Alligator Alcatraz” with Little Oversight — And This Big Campaign Donor Is Set to Reap Millions from It*, FLA. TRIDENT (July 2, 2025, at 14:56 ET), <https://floridatrident.org/governor-desantis-is-building-alligator-alcatraz-with-little-oversight-and-this-big-campaign-donor-is-set-to-reap-millions-from-it> [https://perma.cc/MUY9-R55C].

⁷ *Id.* The governor’s use of emergency powers enabled the state “to hand out contracts with little to no regulatory oversight”; one contractor was an “offshoot” of a firm that has donated hundreds of thousands to the Florida GOP, including to Governor DeSantis and Attorney General Uthmeier. *Id.*

⁸ Kate Payne, *Emails Show DeSantis Administration Blindsided County Officials with Plans for “Alligator Alcatraz,”* ASSOCIATED PRESS (July 17, 2025, at 16:09 ET), <https://www.yahoo.com/news/emails-show-desantis-administration-blindsided-200932328.html> [https://perma.cc/H6S5-7R3X].

⁹ See Ana Goñi-Lessan, *Florida to Open Second Immigration Detention Facility, “Deportation Depot,”* USA TODAY (Aug. 15, 2025, at 13:04 ET), <https://www.usatoday.com/story/news/nation/2025/08/14/florida-second-immigration-detention-facility-deportation-depot/85663546007> [https://perma.cc/W2HT-DQXG].

¹⁰ See Uthmeier, *supra* note 5; Class Action Complaint for Declaratory and Injunctive Relief ¶ 1, C.M. v. Noem, 796 F. Supp. 3d 1198 (S.D. Fla. 2025) (No. 25-cv-23182) [hereinafter C.M. Complaint].

¹¹ Adriana Gomez Licon & Will Weissert, *Trump Tours Florida Immigration Lockup and Jokes About Escapees Having to Run from Alligators*, ASSOCIATED PRESS (July 1, 2025, at 17:27 ET), <https://apnews.com/article/trump-everglades-immigrant-detention-facility-visit-5dc5568ec15534947c29c9149b773d1d> [https://perma.cc/U9YY-UVNQ]. Additional facilities have since been announced and have begun incarcerating individuals in Florida and other states. Isabel Rosales, Shawn Nottingham & Emma Tucker, *Florida’s New Immigrant Detention Site Dubbed “Deportation Depot” Is Now Taking Detainees, Officials Say*, CNN (Sep. 6, 2025, at 8:03 ET), <https://www.cnn.com/2025/09/05/us/deportation-depot-florida-open> [https://perma.cc/97JM-6X6S] (listing facilities in Florida, Indiana, and Louisiana).

¹² See Makiya Seminera, *Protesters Line Highway in Florida Everglades to Oppose “Alligator Alcatraz,”* ASSOCIATED PRESS (June 28, 2025, at 20:40 ET), <https://apnews.com/article/alligator-alcatraz-florida-everglades-protest-db34866aae64a3ff6880310403be40fd> [https://perma.cc/F8LB-LC5L].

¹³ See Aaron Mesmer, *Florida Republicans Selling “Alligator Alcatraz” Merchandise*, FOX 13 TAMPA BAY (July 1, 2025, at 23:25 ET), <https://www.fox13news.com/news/florida-republicans-selling-alligator-alcatraz-merchandise> [https://perma.cc/KM59-2W9J].

¹⁴ See, e.g., Press Release, ACLU, Groups Sue Trump Administration Over Lack of Access to Counsel for People Held at Florida’s Notorious Everglades Immigration Detention Center (July 16, 2025), <https://www.aclu.org/press-releases/groups-sue-trump-administration-over-lack-of-access-to-counsel-for-people-held-at-floridas-notorious-everglades-immigration-detention-center> [https://perma.cc/7R6Y-ML2E].

lawyers and subjecting them to inhumane conditions;¹⁵ that the state agencies' actions lacked statutory authorization;¹⁶ and that the federal government violated the National Environmental Policy Act of 1969¹⁷ (NEPA) by constructing the site without evaluating its potential environmental impact.¹⁸ This last claim was the focus of *Friends of the Everglades, Inc. v. Noem*.¹⁹

The plaintiffs in *Friends of the Everglades* were an environmental group contesting the encroachment of the facility on protected land (including the habitat of the disappearing Florida panther) and the Miccosukee tribe, who were trying to prevent the facility's polluted runoff from flowing into their community, endangering their water supply, food sources, and traditional practices.²⁰ Their NEPA claim required them to prove three elements: "that the construction and/or use of the detention camp involve[d] (1) a final agency action, and (2) a major Federal action, (3) without Defendants conducting a compliant [Environmental Impact Statement]."²¹

The government responded that its facility-related actions did not qualify as "federal."²² One witness declared that the state "absolutely" ran the facility.²³ An ICE field official attested that the state "has complete discretion on deciding who is detained."²⁴ And the government's filings asserted "that 'the ultimate decision of who to detain at the' camp 'belongs to Florida,' and this precludes the project from being a federal action."²⁵ However, the evidence before the district court also showed that federal employees "ma[de] decisions regarding transfer" and "'maintain[ed] custody' of the detainees."²⁶ Moreover, ICE entered into an enforcement agreement that placed Florida officials conducting immigration-related activity under ICE supervision²⁷ and requested the

¹⁵ *Id.*; C.M. Complaint, *supra* note 10, ¶ 3.

¹⁶ Guthrie Complaint, *supra* note 5, ¶¶ 106–109.

¹⁷ 42 U.S.C. ch. 55.

¹⁸ Complaint for Declaratory and Injunctive Relief ¶¶ 61–74, *Friends of the Everglades, Inc. v. Noem*, No. 25-cv-22896 (S.D. Fla. June 27, 2025).

¹⁹ 796 F. Supp. 3d 1234 (S.D. Fla. 2025).

²⁰ *Id.* at 1245–49.

²¹ *Id.* at 1268.

²² *Id.* at 1273. The defendants also contested the "final agency action" prong, but the district court held in the plaintiffs' favor on that score, *id.* at 1271 & n.24, and the Eleventh Circuit appeared to treat the "federal" issue as determinative of both questions, *Friends of the Everglades, Inc. v. DHS*, No. 25-12873, 2025 WL 2598567, at *5 (11th Cir. Sep. 4, 2025) (quoting *Karst Env't Educ. & Prot., Inc. v. EPA*, 475 F.3d 1291, 1295 (D.C. Cir. 2007)).

²³ Patricia Mazzei & David C. Adams, *Judge Orders that "Alligator Alcatraz" Detention Center Be Shut Down for Now*, N.Y. TIMES (Aug. 21, 2025), <https://www.nytimes.com/2025/08/21/us/alligator-alcatraz-florida-ruling.html> [https://perma.cc/RMT4-K92J].

²⁴ *Id.*

²⁵ *Friends of the Everglades*, 796 F. Supp. 3d at 1275.

²⁶ See *id.* at 1274 (quoting Declaration of Juan Lopez Vega ¶ 6, C.M. v. Noem, 796 F. Supp. 3d 1198 (S.D. Fla. 2025) (No. 25-cv-23182), Dkt. No. 50-1; SERT South Florida Detention Facility Continuity of Operations Plan at 4, C.M., 796 F. Supp. 3d 1198 (No. 25-cv-23182), Dkt. No. 43).

²⁷ *Id.* at 1251.

state to construct the facility.²⁸ That construction, state and federal officials had declared, would be reimbursed using Federal Emergency Management Agency (FEMA) funds.²⁹ Accordingly, on August 21, 2025, Judge Kathleen Williams of the Southern District of Florida granted the plaintiffs' motion for a preliminary injunction in part, blocking further construction work on the facility on NEPA grounds and concluding that the plaintiffs had shown sufficient federal control to trigger the applicability of NEPA.³⁰

On September 4, 2025, an Eleventh Circuit panel stayed the preliminary injunction,³¹ finding that the facility was likely state-controlled³² — and not a major federal action under NEPA's definition because it had by that point received “no or minimal [f]ederal funding.”³³ In the meantime, the facility had begun to be evacuated, a move that Governor DeSantis attributed to DHS, stating that “[w]e don't determine who goes into the facility.”³⁴ Immediately after the stay order, Florida officially began seeking reimbursement from FEMA funds.³⁵ It received its \$608 million award on September 30.³⁶

Within two weeks of the stay order, the *Miami Herald* reported that more than 1,200 detainees had either had their locations removed from public view in ICE tracking systems or dropped off of tracking entirely, and that multiple people had been deported without notice to their

²⁸ *Id.* at 1278.

²⁹ Matt Dixon, *Despite Promises of FEMA Funds, Florida Has So Far Received No Federal Money for “Alligator Alcatraz,”* NBC NEWS (July 3, 2025, at 15:31 ET), <https://www.nbcnews.com/politics/trump-administration/florida-no-federal-funds-alligator-alcatraz-rcna216758> [https://perma.cc/NMX7-KLX9]; Kristi Noem (@sec_noem), INSTAGRAM (July 1, 2025), https://www.instagram.com/p/DLlexFmvnaC/?img_index=7 [https://perma.cc/T2JG-HFQ9] (“Alligator Alcatraz will be funded largely by FEMA's Shelter and Services Program . . .”).

³⁰ *Friends of the Everglades*, 796 F. Supp. 3d at 1279, 1286–87.

³¹ *Friends of the Everglades, Inc. v. DHS*, No. 25-12873, 2025 WL 2598567, at *1 (11th Cir. Sep. 4, 2025). Judge Jordan dissented, arguing that the majority did not correctly apply the appropriate standards of review and ignored the defendants' burden. *Id.* at *13–21 (Jordan, J., dissenting).

³² *Id.* at *9 & n.7 (majority opinion).

³³ *Id.* at *6 (quoting 42 U.S.C. § 4336e(10)(B)(i)).

³⁴ Greg Allen, *Florida's “Alligator Alcatraz” Detention Facility to Be Empty “Within a Few Days,”* NPR (Aug. 28, 2025, at 11:22 ET), <https://www.npr.org/2025/08/28/nx-si-5520698/alligator-alcatraz-detention-facility-empty> [https://perma.cc/P64P-43T9].

³⁵ Livia Caputo, *Days After “Alligator Alcatraz” OK'd Due to No Federal Ties, Florida Seeks US Dollars*, FLA. PHOENIX (Sep. 15, 2025, at 13:53 ET), <https://floridaphoenix.com/2025/09/15/days-after-alligator-alcatraz-okd-due-to-no-federal-ties-florida-seeks-us-dollars> [https://perma.cc/B3YC-T5T4]. In October 2025, Friends of the Everglades filed another lawsuit in Florida state court under a state transparency law, stating that the state had made an undisclosed application for reimbursement in *early August*. Complaint for Accelerated Declaratory Relief and Writ of Mandamus Under Florida Public Records Law, *Friends of the Everglades, Inc. v. Fla. Div. of Emergency Mgmt.*, No. 25-ca-001972, ¶ 22 (Fla. Cir. Ct. Oct. 14, 2025).

³⁶ Christina Vazquez, *Florida Awarded FEMA Reimbursement for State-Run Detention Facilities, Including Alligator Alcatraz*, LOCAL 10 (Oct. 2, 2025, at 22:47 ET), <https://www.local10.com/news/florida/2025/10/02/florida-receives-fema-reimbursement-for-alligator-alcatraz> [https://perma.cc/Y3TH-KFGY] (noting that the award was disbursed the day before the federal government shut-down in October 2025).

families or attorneys.³⁷ The state government, which maintained no system to look up detainees, directed inquiries back to ICE.³⁸ Governor DeSantis, when asked to provide a count of the people held at the facility, responded that “it varies.”³⁹ And the stay remained in place.⁴⁰

These consequences — circumvention of environmental regulations, potential deprivation of human and constitutional rights, threats to the Miccosukee tribe’s infrastructure, and people lost to their loved ones and lawyers — stem from the state and federal governments’ attempts to evade accountability and deflect blame throughout the construction and operation of the facility. The Supreme Court has established that policy schemes that endanger accountability also endanger constitutional values of federalism. The facility exemplifies these threats — in part because of the unusual lengths to which the state and federal governments have gone to obfuscate responsibility, and in part because of the enhanced salience of these dangers in the immigration context.

Federalism demands accountability. The Supreme Court has recognized this principle for centuries⁴¹ and has strengthened accountability-related constraints in tandem with the rise of an empowered federal government and complex national policy.⁴² In several 1990s decisions, the Court elucidated the main thread of such constraints: The people must be able to discern responsibility for government action in order to maintain a healthy federalist system.⁴³ This theme emerged in 1992’s *New York v. United States*,⁴⁴ which rejected a cooperative regulatory scheme suggested by a group of state governors;⁴⁵ because Congress “commandeer[ed]” state legislatures and forced them to regulate,⁴⁶ the Court found, “the accountability of both state and federal officials [wa]s

³⁷ See Ben Wieder & Shirsho Dasgupta, *Hundreds of Alligator Alcatraz Detainees Drop Off the Grid After Leaving Site*, MIA. HERALD (Sep. 16, 2025, at 12:52 ET), <https://www.miamiherald.com/news/local/immigration/article312042943.html> [<https://perma.cc/JX5L-A7J7>].

³⁸ *Id.*

³⁹ FORBES BREAKING NEWS, *Ron DeSantis Asked Point Blank: “How Many People Are Currently Being Held at Alligator Alcatraz?”* at 00:12, (YouTube, Sep. 26, 2025), https://www.youtube.com/watch?v=woqPNOI_590&feature=youtu.be [<https://perma.cc/47S9-LGAQ>].

⁴⁰ The Eleventh Circuit both maintained the stay and allowed the government to pause the suit entirely during the fall 2025 federal shutdown. Churchill Ndonwie, *Appellate Court Pauses Alligator Alcatraz Lawsuit Because of Government Shutdown*, MIA. HERALD (Oct. 23, 2025, at 09:20 ET), <https://www.miamiherald.com/news/politics-government/article312610170.html> [<https://perma.cc/S74X-9K6P>].

⁴¹ See *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 435–36 (1819). In *McCulloch*, the Court invalidated a state tax on the national bank in part because the state would be taxing the national population, which would not have political means to challenge the state’s actions. *Id.*

⁴² See Vicki C. Jackson, *Federalism and the Uses and Limits of Law: Printz and Principle?*, 111 HARV. L. REV. 2180, 2181 (1998).

⁴³ See Dan T. Coenen, *Constitutional Text, Founding-Era History, and the Independent-State-Legislature Theory*, 57 GA. L. REV. 539, 594 n.155 (2023).

⁴⁴ 505 U.S. 144 (1992).

⁴⁵ *Id.* at 151, 177.

⁴⁶ *Id.* at 176 (quoting *Hodel v. Va. Surface Mining & Reclamation Ass’n*, 452 U.S. 264, 288 (1981)).

diminished.”⁴⁷ In 1995, concurring in *U.S. Term Limits, Inc. v. Thornton*,⁴⁸ Justice Kennedy argued that separate and direct streams of accountability must extend between each level of government and constituents “who sustain it and are governed by it.”⁴⁹ Two years later, a majority of the Court embraced this principle in *Printz v. United States*,⁵⁰ anointing it “one of the Constitution’s structural protections of liberty.”⁵¹ The theme is clear: Schemes that confuse, block, or otherwise muddle accountability streams are unacceptable if we are to maintain our federal constitutional structure.

Crucially, as Justice Kennedy recognized in *Thornton*, clear accountability streams are necessary to prevent actors at *all levels* of government from manipulating federal structures for political or personal gain. In *New York v. United States*, for example, the majority — in an opinion by Justice O’Connor — worried that if government officials believe that they can cast blame for unpopular choices (there, the location of nuclear waste sites) on a different level of government, “powerful incentives” could lead them to shift responsibility.⁵² Accordingly, “federalism is hardly being advanced”⁵³ if state or federal actors allow the other level of government to act — or to appear to act — in order “to avoid being held accountable to the voters for the choice.”⁵⁴

The accountability confusion surrounding the facility in the Everglades is unlike anticommandeering in that, rather than stemming from potential federal overreach, it is the result of different stories told by two different levels of government to deflect responsibility or evade regulatory requirements. Yet it demonstrates the real-world consequences of accountability evasion more obviously than anticommandeering does. Where critics of *New York v. United States* and *Printz* could argue that voters could determine responsibility through basic research,⁵⁵ such critiques are inapplicable here. Rather than merely trying to understand confusing but ultimately compatible and distinguishable systems, voters considering responsibility for the facility have nowhere to turn as the state and federal governments provide conflicting explanations.

⁴⁷ *Id.* at 168. This became known as the “anticommandeering” doctrine. See Jackson, *supra* note 42, at 2183.

⁴⁸ 514 U.S. 779 (1995).

⁴⁹ *Id.* at 838 (Kennedy, J., concurring).

⁵⁰ 521 U.S. 898 (1997).

⁵¹ *Id.* at 921; see Rachel F. Preiser, *Staking Out the Border Between Commandeering and Conditional Preemption: Is the Driver’s Privacy Protection Act Constitutional Under the Tenth Amendment?*, 98 MICH. L. REV. 514, 528 (1999).

⁵² *New York v. United States*, 505 U.S. 144, 182 (1992).

⁵³ *Id.* at 183.

⁵⁴ *Id.* at 182.

⁵⁵ See, e.g., R. Seth Davis, Note, *Conditional Preemption, Commandeering, and the Values of Cooperative Federalism: An Analysis of Section 216 of EPAct*, 108 COLUM. L. REV. 404, 426 (2008) (arguing that the Court’s accountability confusion conclusions indicate “a dim view of voter sophistication”) (citing *Printz*, 521 U.S. at 957–58 n.18 (Stevens, J., dissenting)).

For example, after the preliminary injunction took effect, Governor DeSantis (1) blamed the federal government for the facility's evacuation ("[w]e don't determine who goes in")⁵⁶; (2) barred Florida lawmakers from entering the facility because it was not a "state correctional institution" but instead detained people "under the authority of the federal government";⁵⁷ and (3) directed questions about detainees to ICE⁵⁸ despite claims by the state *and* federal governments, just weeks earlier, that Florida had "complete discretion" over who was detained.⁵⁹ Meanwhile, the federal government (1) promised FEMA funding for the facility; (2) delayed providing funding, arguing in court that because the money had not yet been distributed to Florida, the facility was not subject to NEPA; (3) won a stay on this basis; then (4) disbursed the funds.⁶⁰ These tactics have enabled the state and federal governments to evade not only the accountability protections of the judicial system, but also the federal government's NEPA obligation to conduct an environmental review — itself an accountability-forcing obligation relying on transparency, public input, and procedural protections to mitigate environmental degradation.⁶¹ The anticommandeering decisions were concerned with the federal government taking credit for popular aspects of projects while offloading the unpopular or burdensome aspects.⁶² Here, the state and federal governments have both taken credit and offloaded blame, in court and in the public eye, contradicting each other and themselves whenever it has benefited them to do so. Such a situation fundamentally muddles accountability streams — if there *is* no clear explanation of responsibility, the people won't find it no matter how hard they look.

The immigration context only intensifies this confusion — and its liberty-infringing consequences. The public may be especially susceptible to accountability confusion in this context because immigration is an area of federal authority.⁶³ In *United States v. Lopez*,⁶⁴ Justice Kennedy argued that when the federal government regulates "areas of traditional state concern, . . . the spheres of federal and state authority . . . blur and political responsibility . . . become[s] illusory."⁶⁵ The state government

⁵⁶ Allen, *supra* note 34.

⁵⁷ CBS Miami Team, *Florida Gov. DeSantis Fires Back at Democrats Over "Alligator Alcatraz" Access Lawsuit*, CBS NEWS (Nov. 24, 2025, at 11:11 ET), <https://www.cbsnews.com/miami/news/desantis-fires-back-at-democrats-over-alligator-alcatraz-access-lawsuit> [https://perma.cc/T62J-UK3X].

⁵⁸ Wieder & Dasgupta, *supra* note 37.

⁵⁹ Mazzei & Adams, *supra* note 23; *see supra* notes 23–27 and accompanying text.

⁶⁰ *See supra* notes 29–36 and accompanying text.

⁶¹ Richard Lazarus, *Repealing Environmental Law's Magna Carta Amidst the Devolution of Environmental Law*, 104 TEX. L. REV. ONLINE, <https://texaslawreview.org/repealing-environmental-laws-magna-carta-amidst-the-devolution-of-environmental-law> [https://perma.cc/XJ7N-HHAW].

⁶² *See, e.g.*, Preiser, *supra* note 51, at 529–30.

⁶³ *See Arizona v. United States*, 567 U.S. 387, 394 (2012).

⁶⁴ 514 U.S. 549 (1995).

⁶⁵ *Id.* at 577 (Kennedy, J., concurring).

asserting traditional federal authority is even more likely to distort accountability: In a *Lopez* situation, state voters, who constitute a subset of the national electorate, can hold their federal representatives accountable for the state-level harmful effects of federal decisions.⁶⁶ But national voters cannot hold state officials accountable for the state's harms to national interests.⁶⁷ Moreover, confusion gains enhanced urgency in the immigration context because the system is often opaque, moves quickly, and lacks standard due process protections.⁶⁸ Yet the national electorate will have difficulty ascertaining how to affect decisionmaking on a facility that is advertised as state run. And advocates and detainees' communities nationwide may be unable to determine whom to sue or question about issues at the facility due to the literal confusion caused by the state and federal governments' shifting stories about control.⁶⁹ As a result, alleged human rights violations at the facility are more likely to proceed unchecked.⁷⁰

Through these tactics, the government has obscured both the chain of responsibility for the facility and the means — political, legal, or otherwise — by which others can affect its operations. The state and federal governments' shifting accounts of the facility's control and funding not only contravene the Court's theoretical worries about buck-passing in a federalist system — they are already blocking the efforts of concerned family members and lawyers to prevent and end concrete, ongoing harms.⁷¹ But these results should not be surprising, because federalism, judicial review, and checks on power are not abstract concepts: They are structural constraints meant to safeguard liberty and dignity, and when they fail, real people suffer the consequences. Real people struggle to live in dismal conditions; real people are deported without being able to contact their lawyers or tell their families goodbye; real communities become flooded with pollution, their water contaminated, their cultural practices more and more difficult to sustain; real ecosystems and endangered species lose precious ground. When voters, communities, journalists, and lawyers are shut out of decisionmaking

⁶⁶ See *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 552 (1985).

⁶⁷ See *supra* note 41.

⁶⁸ For example, the federal government has recently attempted to deport hundreds of children before courts could rule on challenges to the deportations, see *L.G.M.L. v. Noem*, No. 25-cv-02942, 2025 WL 2671690, at *3 (D.D.C. Sep. 18, 2025), and the Supreme Court has permitted deportations to “third countr[ies]” without hearings, *DHS v. D.V.D.*, 145 S. Ct. 2153, 2153 (2025) (mem.) (granting application for stay); *id.* at 2154, 2161 (Sotomayor, J., dissenting).

⁶⁹ See, e.g., *C.M. Complaint*, *supra* note 10, ¶ 71.

⁷⁰ See AMNESTY INT’L, TORTURE AND ENFORCED DISAPPEARANCES IN THE SUNSHINE STATE 7 (2025), <https://www.amnestyusa.org/wp-content/uploads/2025/12/Torture-and-Enforced-Disappearances-in-the-Sunshine-State-Human-Rights-Violations-at-Alligator-Alcatraz-and-Krome-in-Florida.pdf> [<https://perma.cc/XUT7-ZN6G>] (finding that the facility's conditions “amount to cruel, inhuman, and degrading treatment”).

⁷¹ See Wieder & Dasgupta, *supra* note 37.

through inconsistent narratives and purposeful obfuscation, these are the results.

Both courts and communities can and should respond to mitigate these harms. Courts should acknowledge conflicting accounts and gamesmanship, rejecting a formalist approach — like that of the Eleventh Circuit’s stay order — that reasons only from the arguments made in briefs and ignores the conflicting narratives playing out openly on the public stage.⁷² By accounting for these shifting stories, courts could better hold the government responsible for the tactics and effects of accountability evasion.⁷³ And, crucially, the people must continue to expose the comparative responsibility of each level of government. For our constitutional system to protect liberty and promote dignity, accountability must prevail.

⁷² See *Friends of the Everglades, Inc. v. DHS*, No. 25-12873, 2025 WL 2598567, at *18 (11th Cir. Sep. 4, 2025) (Jordan, J., dissenting).

⁷³ Cf. Benjamin Eidelson, *Reasoned Explanation and Political Accountability in the Roberts Court*, 130 YALE L.J. 1748, 1754 (2021) (“By disabling the agency from relying on a pretext for purposes of judicial review, therefore, the Court was also protecting the distinct, political channel of accountability that runs from the agency to the public at large.”).